

# Consumers' Experiences of Legal Services: Rapid Review

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## Executive Summary

The Victorian Legal Services Board and Commissioner (VLSB+C) engaged the Australian Centre for Justice Innovation (ACJI) to provide a literature review on consumers' experiences of legal services. The review was undertaken by ACJI Director A/Prof Genevieve Grant, with the support of ACJI Research and Advocacy Assistants Catherine Zhou and Adam Reisner.

This rapid review was conducted in June 2021. The aims of the review were to investigate:

- evidence of consumers' experiences of selecting and using private legal services, focusing on evidence of consumers' 'information needs, their levels of comprehension of the services to be provided and their satisfaction with those services' (VLSB+C, 2021); and
- evidence of the operation of legal service markets in this domain.

The review adopted a structured approach to identifying, collating and synthesising relevant academic and grey literature sources. It focuses on the experience of consumers VLSB+C describes as having

*less economic power, particularly personal, small business and Not-for Profit consumers, and especially those who may be in a position of vulnerability when using legal services. These consumers tend to engage infrequently with lawyers and the legal system. They are engaged in areas of law relating to highly personal issues, and are characterised by the experience of strong emotions, stress and vulnerability, ignorance and inexperience with legal processes and lawyers (emphasis added) (VLSB+C, 2021).*

This group of consumers is referred to as the 'population of interest' throughout this report.

**Part 1** of this report provides an overview of the background and purpose of the review. The design of the search strategy and relevant sources of literature are also outlined.

**Part 2** examines the research evidence across (a) large-scale, multi matter-type analyses of consumers' experiences and (b) analyses of the evidence in several discrete matter types or practice areas.

**Part 3** presents work on the operation of the Australian legal services market, identifying the weak existing evidence and value of reference to international research and analysis.

**Part 4** provides a discussion of the findings, explaining the likely reasons for the current state of the evidence base on consumers' experiences and the potential barriers affecting efforts to do better. It makes a series of recommendations for the consideration of the VLSB+C and the Consumer Panel on future research needs and options.

The next section summarises the key findings and recommendations from Part 4.

## Key findings

### What does the existing evidence tell us?

#### *There is limited evidence and the gaps are large*

- There is little research exploring the experience of the target population in selecting, using and assessing satisfaction with private legal services.
- The insight provided by existing quantitative research does not address consumers' experiences of services in depth.
- The research in the personal injury and family law domains is predominantly qualitative and based on self-selected samples. This kind of research provides useful in-depth insight, but is not representative of all consumer experiences.
- There is a particular evidence gap around consumers' experiences of paid legal services that are *not* associated with immediate legal problems (in the sense dealt with in legal need research), or 'personal plight' legal services.

#### *Consumers do not shop around and are confused by costs – and these factors impact on satisfaction*

- Though it may be insufficiently recent to pick up on the use of modern online search mechanisms, the existing evidence suggests personal referrals and networks continue to play an important role in lawyer selection.
- There is confusion about legal costs and this can be exacerbated by a lack of understanding of the work the lawyer does. Lack of understanding and confusion on costs can have a negative impact on how satisfied clients are with the services they have received.
- Client satisfaction with lawyers may not only be about the quality of services. Satisfaction with outcome and the interpersonal relationship between lawyer and consumer may also play a role.

### The evidence we have raises significant questions

- Despite regulatory mechanisms that purport to ensure consumers understand costs agreements they enter into, the evidence suggests confusion persists.
- Clients, services and markets are heterogeneous. In the personal injury sector, for example, consumers have reported differing preferences about how active a role they wish to retain in their claim.

- Evidence indicating that in the personal injury sector lawyers choose consumers just as consumers choose lawyers should be investigated. In particular, are there other client selection practices occurring in other areas of law, and what are their access to justice and market-shaping implications?

### **The lack of prevalence data and user access are barriers**

- Properly understanding the operation of a market for legal services requires information about how many individuals and entities are using services in the market. There is not a good quality body of evidence about the prevalence of private legal service use in the consumer population of interest.
- This is largely a product of the status of private law firms and practitioners as the custodians of the data about service use in this market sector.
- The involvement of private lawyers makes it hard to get to consumers for research.
- The relatively infrequent use of private legal services by consumers in the target population is a challenge for any research that seeks to establish a representative, quantitative picture of consumers' experiences. To get a representative sample of users of legal services would require establishing a survey with a random probability sample, an expensive approach that runs the risk of generating an insufficient sample size.

### **There has been little attention to vulnerability risk factors**

- The review found very little evidence of empirical research differentiating between groups of consumers in the population of interest on the basis of legal capability or what have been described as vulnerability risk factors (eg cognitive impairment, mental health problems, disability). There would be value in exploring suitable research designs to assess the experience of relevant consumer groups, as the UK Legal Services Board has done. The CMA (2020) recommends that regulators should use existing data for this purpose.
- One option could be for the LSB+C to build on its existing research on complaints to explore whether consumers with vulnerability risk factors are more likely than others to be involved in complaints, or complaints of different types. Additionally, it would be worthwhile to explore whether such consumers are more likely than others to experience lawyer misconduct.

## Why is there a lack of good quality evidence?

### *Private firms have little incentive to improve the evidence*

- Private firms are effectively the custodians of data about the number and identities of consumers (clients) being advised in the population of interest. There are powerful commercial and reputational reasons for such firms not divulging this information or to facilitate research.
- There is an unknowable body of privately-held commercial evidence about the profile of consumers in the population of interest accessing services.
- It is highly likely that larger private firms servicing the population of interest engage in their own market monitoring activities, and perhaps also gather customer service feedback, but for commercial and reputational reasons they are also unlikely to divulge this information.
- It is also worth noting that there is a lack of familiarity with empirical and evaluation research amongst lawyers, which adds to scepticism and suspicion about the value of this kind of research.

## Recommendations for future research

### **A guide from the Competition and Markets Authority (UK)**

In December 2020, the CMA published an assessment of the implementation of its 2016 Market Study. In that assessment, it provided a guide to the research methods that are most typically suited to researching and testing consumer experiences and designing and implementing interventions:

- (a) **Qualitative research:** this method commonly includes consumer focus groups, workshops and interviews (with both consumers and legal services providers). It can be used to explore consumer or firm behaviours, attitudes, expectations and beliefs both at present and in the presence of new remedies, as well as to inform remedy design before other forms of testing;
- (b) **Surveys:** these can be used to provide robust evidence for specific questions, in order to obtain quantitative and/or qualitative information on consumer and provider attitudes, beliefs and expectations.
- (c) **Laboratory testing:** laboratory testing and online experiments can provide insights on consumers' ability to 'assess' new information. In a laboratory experiment, participants are assigned to groups and given a specific scenario (eg how the publishing of price and quality information in different formats affects consumers' ability and willingness to compare and choose between legal services providers).

- (d) **Field trials:** this involves real-life testing of interventions (also called randomised controlled trials or RCTs). In a typical trial, the population to be tested is divided into two groups – one group would receive the service as usual and the other would receive the new intervention (eg the visibility of complaints data prior to purchase). The difference in customer behaviour and outcome can then be measured.
- (e) **User/human-centred or User Experience (UX) design:** these are not entirely separate methods but rather terminology used to describe design processes that involve users throughout. User centres / UX design comprises a mix of iterative design underpinned by inputs from research to understand user needs as well as user testing of designs with end users (CMA, 2020).

### In view of the challenges, creative strategies are required

- It could be prudent to start developing a research agenda with some small-scale qualitative and experimental pieces of work before commissioning a large-scale quantitative survey. Getting runs on the board would help with developing stakeholder buy-in. Commencing with a focus on consumers facing vulnerability risk factors would be a highly appropriate starting point.
- In view of the inaccessibility of some data, creative strategies are required to identify potential research partners and data sources. This could involve partnering with institutional litigants, industry stakeholders, and dispute resolution organisations to facilitate access to administrative data or recruitment of research participants.
- There are some examples of this being done successfully in the existing literature. Analysis of administrative data held by compensation schemes enabled a profile of lawyer use in injury claims to be developed. Longitudinal research designs – where a cohort of consumers is established and followed up over time – are another mechanism to get to consumers.
- There is also strong potential associated with the use of user/human-centred, interaction or User Experience (UX) design to experimentally test consumers' understanding of costs agreements to explore how much comprehension and informed consent is possible, and whether improvements can be made.
- Mystery shopping approaches may also have some application to some legal services used by the population of interest, for example to establish common pricing for standard services.



## There are specific topics about which further research is needed

The discussion above suggests a number of possibilities for consideration, both to frame potential research and as research questions to explore:

- What incentives and levers are available to encourage private firms and practitioners to participate in consumer experience research?
- How do vulnerabilities affect the selection and use of legal services by the population of interest? Are consumers with vulnerability risk factors more likely to experience lawyer misconduct or be involved in complaints than other users? What data does VLSB+C hold that might be used to address this question?
- How can private legal services learn from the growing research on legal capability? How can the relevance of legal capability for paid legal services be explored?
- What are the impacts of new technologies on legal practice and legal services markets relevant to the consumer population of interest? How are these changes impacting on consumers?
- What innovative design and experimental research approaches could be applied in the Victorian legal services setting (for example, mystery shopping research to explore the costs of common legal services, and interaction design research to explore the optimal design of costs disclosures)?
- How might the evidence gap around consumers' experiences of paid legal services that are *not* associated with immediate legal problems, or 'personal plight' legal services, best be addressed?

# Part One: Background and Approach

## 1.1 Introduction

### 1.1.1 Purpose

The purpose of this report is to identify and review evidence of consumers' experiences of paid legal services and associated markets in Australia, with specific attention to a defined consumer population of interest. By mapping the research evidence, this report establishes the coverage and gaps in what is known about these consumers' experiences of paid legal services. Drawing on the findings of the literature review, the report makes recommendations about future research needs and options in relation to consumers' experiences of legal services.

### 1.1.2 The value of understanding consumer experience

Empirical understanding of whether and how consumers select, use and evaluate legal services is valuable in a number of ways. It provides a basis for challenging impressionistic evidence or assumptions about consumer behaviour and tools for engaging stakeholders. It shines light on heterogeneity within the market for legal services and consumers' experiences, highlighting practices and sectors that may require further research and regulatory attention. It may also provide impetus for change to policy or law. Perhaps most importantly, a focus on empirical evidence can ensure that consumer experiences are at the centre of analysis of the operation and impacts of legal profession regulation.

## 1.2 Review scope

The review identifies and analyses evidence of consumers' experiences of selecting and using paid legal services across relevant legal subject-matter areas. It focuses on evidence of consumers' 'information needs, their levels of comprehension of the services to be provided and their satisfaction with those services' (VLSB+C, 2021). Additionally, it includes relevant evidence of the operation of legal service markets and consumer policy in this domain.

### 1.2.1 Consumer population and legal services of interest

The consumer population of interest for the review is

*consumers with **less economic power**, particularly **personal, small business and Not-for Profit consumers**, and especially those who may be in a position of **vulnerability** when using legal services. These consumers tend to **engage infrequently** with lawyers and the legal system. They are engaged in areas of law relating to **highly personal issues**, and are characterised by the experience of strong emotions, stress and vulnerability, ignorance and inexperience with legal processes and lawyers (emphasis added) (VLSB+C, 2021).*

This framing of the population of interest overlaps incompletely with ‘personal plight legal services’, meaning those where ‘the clients are individuals and the legal needs arise from disputes’, such as family law, criminal defence and plaintiff-side personal injury matters (Semple, 2018, p. 181; Heinz & Lauman, 1978). These and other legal services may also be ‘distress purchases (for example, due to an urgent need or because the situation may be upsetting’ (Competition & Markets Authority, 2016, p 26).

As a preliminary matter it was necessary to identify which legal problem or matter types were most relevant to the review. One relevant indicator is the league table of matter types about which VLSB+C received complaints in 2019-20. The leading matter types were:

- family/defacto (24 per cent);
- ‘other civil’ (including civil liberties, debt collection, defamation, freedom of information and a range of other matter types) (23 per cent);
- probate and family provision (10 per cent);
- conveyancing (9 per cent);
- commercial, corporations and franchise (7 per cent); and
- criminal (6 per cent) (VLSB+C, 2020).

Matter types each accounting for less than 5 per cent of complaints were personal injuries (including motor vehicle accident and workers’ compensation); wills and powers of attorney; building; employment; professional negligence; and leases and mortgages (VLSB+C, 2020).

Another key influence on the review’s focus is evidence of the most common types of legal problems community members experience, and among those, the problem types for which people are most likely to seek legal advice from private lawyers. In the most recent large-scale study of Victorians’ response to legal problems, Coumarelos et al (2012) identified that the most common groups of legal problems experienced by community members were:

- consumer problems (experienced by 20 per cent of respondents);
- crime problems (13 per cent);
- government problems (11 per cent); and
- housing problems (10 per cent).

In contrast, only 5 per cent of respondents experienced family law problems.

The research found that private lawyers (solicitors and barristers) were consulted in dealing with 21 per cent of problems where the respondent sought legal advice. When considering the problems for which private lawyers were most commonly used, the major types were:

- money problems (private lawyer consulted for 55 per cent of problems, particularly wills and estates and business ownership sub-categories);
- family problems (52 per cent);
- credit/debt problems (31 per cent);
- government problems (23 per cent);

- employment problems (22 per cent);
- housing problems (21 per cent); and
- consumer problems (20 per cent) (Coumarelos et al, 2012).

Based on of the profile of the consumer population of interest, evidence of prominent areas for complaints and data from legal need research on the prevalence of legal problems and the use of private lawyers in Victoria, the following were identified as subject matter areas of paid legal services of interest for the review:

- family law;
- probate and family provision;
- criminal law;
- small business;
- personal injury;
- consumer problems;
- property, conveyancing and housing law;
- government law; and
- credit and debt.

The present review is focused on consumers of private (paid) legal services, with an emphasis on those with less economic power and low levels of experience of legal services. Accordingly, the review does not explore the experience of experienced ‘repeat player’ users of legal services such as large organisations, commercial enterprises and institutional litigants (Galanter, 1974). It also does not seek to explore the experiences of users of free services provided by not-for-profit organisations, Community Legal Centres or legal aid organisations, nor persons who act as self-represented litigants or engage in self-help strategies in the absence of private legal services. The review focuses predominantly on Australian evidence, drawing on international examples where relevant for comparison and contrast.

### 1.2.2 Empirical evidence of consumer experiences

The parameters of the research in the literature review were as follows:

- The review included relevant academic and grey literature (the latter meaning ‘the diverse and heterogeneous body of material available outside, and not subject to, traditional academic peer-review processes’ (Adams, Smart & Huff 2017, p 433)). In the context of consumer experiences of legal services, grey literature most commonly takes the form of research reports published by regulators, government agencies, advocacy and peak body organisations, research organisations, commercial consultants and market analysts.
- Chief priority was given to empirical evidence – based on qualitative and/or quantitative data – with emphasis on data collected from consumers of legal services (for example, through surveys, interviews or focus groups).
- Research using administrative data (‘found data’ in the form of information and records routinely collected in the course of the administration of services, as

distinct from ‘made data’ generated for a specific research purpose (Connelly et al, 2016, p3)) was included where it sheds light on the use of legal services by consumers.

- Research in which legal practitioners and other industry stakeholders provide their views about consumer behaviour and experiences in the absence of data directly from consumers was included but accorded less priority than that from the consumer perspective.

## 1.3 Research approach

### 1.3.1 Search strategy

The strategy for identifying and collating literature relevant to the review involved the following steps:

#### 1.3.1.1 Academic research literature

- a. Searches of key terms and phrases in scholarly databases
- b. Exploration of citation networks related to identified sources, including through citation mapping tools.

#### 1.3.1.2 Review of websites of key organisations

The websites of organisations relevant to legal services and markets and subject-matter areas were reviewed to obtain research reports (grey literature). Examples include:

- a. Legal research organisations
  - i. Law and Justice Foundation of NSW
  - ii. Victoria Law Foundation
  - iii. Australian Institute of Family Studies
  - iv. American Bar Foundation
  - v. Institute for the Advancement of the American Legal System
- b. Legal profession regulatory authorities
  - i. Australian (Legal Services Council, VLSB+C, Office of the Legal Services Commissioner (NSW) and equivalent organisations in other Australian states and territories)
  - ii. International (eg Solicitors Regulatory Authority and Legal Services Board (UK))
- c. Industry organisations
  - i. Institute of Actuaries
  - ii. Law Council of Australia

- d. Not for profit, access to justice and consumer organisations
  - i. Justice Connect (Victoria)
  - ii. Legal Education Foundation (UK)
  - iii. Legal Services Consumer Panel (UK)

#### *1.3.1.3 Market, sector and government reports*

Finally, websites of major commercial, government and dispute resolution organisations were reviewed to obtain grey literature. Examples include:

- a. Commercial providers (eg IBISWorld, Thomson Reuters)
- b. Government research organisations (eg Australian Bureau of Statistics, Productivity Commission, Competition and Markets Authority (UK))
- c. Ombudsmen and dispute resolution organisations (eg Australian Small Business and Family Enterprise Ombudsman)

#### *1.3.2 Quality and relevance appraisal*

The collated literature was subjected to a quality and relevance appraisal, with key publications, themes and findings selected for consideration and analysis in the review. Though not adopting a strict systematic review approach to analysis of the evidence, it was important to ensure that the literature met standards of relevance and research quality to be included in the review.

In terms of relevance, close attention was paid to the subject of the research and its relationship to the review scope (principally, whether the consumer population of interest was included), the jurisdiction in which research was conducted (and regulatory differences), the date of publication and the applicability and transferability of the findings to the Victorian setting. For research quality, a pragmatic and tailored standard was developed consistent with published guidelines on academic and grey literature, being attentive to the interdisciplinary and fragmented nature of the literature and the diverse sources involved (Snyder, 2019; Adams, Smart & Huff, 2017). Critical features used to determine inclusion included clarity of research design, adherence to methodological standards and evidence and organisational credibility.

#### *1.4 Overview of this report*

There are six parts to the report:

- Executive Summary
- Part One – Background and Approach
- Part Two – Evidence of Consumer Legal Services Experience
- Part Three – The Australian Market for Legal Services
- Part Four – Discussion and Recommendations
- Part Five – Conclusion

## Part Two: Evidence of Consumer Legal Services Experience

This Part of the report presents the main findings of the literature review as it relates to consumer experiences of legal services in the population of interest. The presentation findings is in two sections, dealing with:

- large-scale quantitative research spanning legal subject matter types; and
- evidence of consumer experiences organised by matter type.

### 2.1 Quantitative evidence across problem types

A number of large-scale surveys provide evidence of the way consumers in the population of interest use and experience private legal services. These include:

- legal need surveys;
- research that explores community members' perceptions of encounters with lawyers;
- research on consumer law problems; and
- analyses of complaints and disciplinary data.

This research spans legal problem types rather than focusing on a single problem area. On the whole, this work provides relatively limited detail about client experience of services in the population of interest.

#### 2.1.1 Legal need and community perceptions research

Though focused on broader questions of access to justice, legal problem resolution and publicly-funded services, legal need research contains a range of information about the use of private lawyers by community members with legal problems, across multiple matter types. As described at Part 1.2.1 above, the LAW Survey provides important contextual information about the relatively infrequent use of private legal services by community members to resolve their legal problems (Coumarelos et al, 2012). Beyond issues of prevalence, the LAW Survey and most other legal need surveys do not address consumers' 'information needs, their levels of comprehension of the services to be provided and their satisfaction with those services' (VLSB+C, 2021; cf BMG, 2018, discussed at Part 2.2.3 below). The LAW Survey does report on the means used by consumers to source legal advisers, but this information is not differentiated into private and other legal advisers (Coumarelos et al, 2012).

More recently, Balmer et al (2019) used a survey nested in an established probability-based online panel to explore community members' perceptions of lawyers. In a survey of 1,846 respondents (completion rate 69 per cent of panel members, with 80 per cent completing online and 20 per cent by phone), it was found that few people had a first-hand experience of using a lawyer in the previous five years, but those who did were satisfied. Some 432 respondents (23 per cent) reported using a lawyer in the previous 5 years, and 336 of these consumers (78 per cent) were satisfied with their lawyer's assistance. Second-hand accounts of lawyer

use (from friends, family or colleagues) were more likely to be negative (first-hand users were dissatisfied with 23 per cent of lawyer use; whereas 59 per cent of second-hand accounts were negative) (Balmer et al, 2019).

### 2.1.2 Consumer Law Survey

The Australian Consumer Survey 2016 (ACS) was conducted on behalf of Consumer Affairs Australia and New Zealand in 2015. It was designed to 'inform Australia's consumer policy makers about the views, experiences and understanding of Australian consumers and businesses on the effectiveness of the ACL and its enforcement and administration' (EY Sweeney, 2016). The ACS provides information about consumer and business action in connection with legal services, both (a) where a problem results in the use of legal services and (b) where 'legal or professional services' were themselves the problem. The discussion here focuses on the problematic legal and professional services ((b)); the evidence provided by the ACS on consumers' use of lawyers in connection with consumer problems ((a)) is inferior to the LAW Survey because of the weaker methodology, despite being more recent.

The consumer component of the ACS involved 5,408 respondents across online (80 per cent) and phone formats (20 per cent). Participants were selected at random from an online sample provider panel and telephone sample list. The business survey was conducted by telephone with 1,210 participants drawn from a commercial business database. Quotas and sample weighting were employed. The ACS report provides no information about rates of non-response or characteristics of non-responders. Most significantly, it is not clear what other professional services are included in the category of 'legal or professional services' (accounting services may be part of the same category, for example).

The ACS reported that in 2015, 36 per cent of consumer respondents (n=1,920) had purchased legal or professional services in the previous two years; of those, 9 per cent (n=189) reported experiencing a problem when making their purchase (the corresponding numbers for the Victorian subsample were 36 per cent (n=440) purchased services, and 11 per cent (n=48) experienced a problem). Further analysis of the timing and nature of the problem was impeded by the small number of respondents with problems in this category. Data was not collected for this service type in the 2011 iteration of the ACS, so comparison across surveys is not possible.

### 2.1.3 Complaints and disciplinary action against lawyers

As described in Part 1.2.1, complaints and disciplinary data highlight what are likely to be areas of serious consumer dissatisfaction with services. Importantly, they are not reflective of the broader consumer experience. There is good reason to believe, for example, that as in other areas of legal problems, some consumers may be more likely than others to make complaints, while others might 'lump' their problem with their lawyer (see, eg, Coumarelos et al, 2012). Some consumers may not be aware of a deficiency in services about which they might complain (see the discussion of



information asymmetry between consumers and lawyers at Part 3.1 below). Disciplinary data is even more limited given the range of factors that might mean a consumer complaint might not become a disciplinary proceeding. Nonetheless, research based on complaints and disciplinary data may provide insight into areas of practice or services where regulatory attention might best be targeted, informing risk-based regulation.

The annual reports of VLSB+C and equivalent organisations provide data on the profile and trends of complaints and disciplinary actions against lawyers (see eg VLSB+C, 2020). VLSB+C commissioned analysis of its complaints data from 2005-15, which facilitated construction of profiles of practitioners who are most likely to be complained about (Sklar et al, 2019; Sklar et al, 2020). Though internationally there is a growing number of studies that empirically analyse lawyer misconduct using complaints and disciplinary data (Sklar et al, 2019; Boon & Whyte, 2019), this work does not explore whether consumers with vulnerability risk factors are more likely to experience lawyer misconduct.

There are, however, some interesting descriptive analyses of complaints, misconduct and consumer vulnerability. Moore et al (2019) explored published decisions in New Zealand disciplinary cases involving solicitors and conveyancers from 2011-17, finding that 25 of 193 consumers involved 'qualified as vulnerable based upon age, gender, mental health-neuro-disability or immigrant status' (p 265). Additionally, Barry (2018) reports that there has been little empirical work on how lawyers assess legal decision-making capacity in elderly clients. Through content analysis of capacity-related complaints to the New South Wales Office of Legal Services Commissioner from 2011-13 (n=35), Barry identifies the ways lawyers who fail to make appropriate capacity assessments contribute to negative experiences amongst their clients (through exposure to possible elder abuse and Guardianship hearings to resolve capacity disputes). The paucity of research in this area makes it clear that further work on the relationships between lawyer conduct and the experiences of vulnerable clients is required (Moore et al, 2019). The emerging evidence base relating to the experience of consumers with vulnerability risk factors is discussed further in Part 4 below.

## 2.2 Consumer experience by problem type

This Part of the report was intended to provide an in-depth analysis of research relating to consumer experience across a range of legal problem or subject-matter types. In most problem areas, however, insufficient literature was identified to address the scope of the review.

No Australian literature was located, for example, on the experiences of consumers of paid criminal law services or the means by which such consumers select lawyers. For wills, estates and family provision, a single study was identified: a 2012 national telephone survey of 2,405 adults in Australia found that 59 per cent of respondents (n=1,425) had a will (Tilse et al, 2015). Most respondents who had a will had it drawn

up by a private lawyer (58 per cent) or a wills and estate specialist (15 per cent) (Tilse et al, 2015). The research did not address these consumers' 'information needs, their levels of comprehension of the services to be provided and their satisfaction with those services' (VLSB+C, 2021).

Ultimately, it only proved possible to assemble and analyse a body of evidence for three problem or matter types: personal injury, family law and small business. These syntheses are presented below.

### 2.2.1 Personal injury

In the last two decades, a growing body of interdisciplinary research has explored claimants' experiences of engaging with Australian transport accident and workers' compensation schemes and associated legal processes (see, eg, Grant et al, 2014 (demonstrating a link between stressful claims processes and poor long-term health outcomes amongst claimants); Kilgour et al, 2015 (reviewing interactions between injured workers and insurers in workers' compensation); Orchard, Carnide & Smith, 2020 (investigating the impact of perceived fairness of claims processes on claimant mental health)).

One strand of this research has used qualitative methods to explore how claimants select, experience and evaluate using a lawyer in connection with their personal injury claim. One such study used a longitudinal cohort study of injury patients in Victoria, New South Wales and South Australia who were followed up over 6 years post-injury (Grant, 2015). Amongst 332 participants who had made claims for compensation by the six-year mark, 48 per cent reported using a lawyer for their claim. Participants were asked about the most challenging aspects of the claims process and changes they would make to improve the process for others; qualitative analysis of their responses focused on the following aspects of lawyer use:

- claimants engaged lawyers when they began to feel the compensation scheme or insurer was not being transparent with them;
- a number of claimants attributed their positive outcomes to their lawyer's involvement, including how they 'took care of things' and facilitated communication with case managers where that had been problematic;
- other claimants perceived their lawyer as having been of marginal benefit to their claim, with poor service ('getting in contact, timelines of response and inadequate advice' (Grant, 2015, p 647-8) being particular concerns.

The *Claims, Advice and Decisions After Injury Study* interviewed transport accident claimants in New South Wales about their lawyer use in 2016-17 (Grant, 2018). The study purposefully recruited 20 interviewees from a hospital inception prospective cohort study (which enrolled consecutive patients as participants shortly after injury and followed them up over an extended period). A more recent Victorian study interviewed 12 transport accident compensation claimants about their experiences of lawyer use (Scollay, Batagol and Grant, 2021). The findings of these studies were consistent, namely that:

- claimants located lawyers using online searches and referrals from health care practitioners, friends and family, and very few reported shopping around;
- claimants had different preferences in terms of the role they wanted their lawyer to play, with some opting to 'leave it to their lawyer' while others remained engaged and proactive, opting to strategically deploy the lawyer when required;
- for many claimants, lawyers played an important role in addressing deficits in understanding about legal processes and the law, mediating interactions with insurers and ensuring relevant losses were accounted for (see also Lewis, 2017);
- despite this, a number had little understanding of the work their lawyer had done, which affected their assessment of the quality of the service they had been provided with and whether the services represented value for money (with some claimants regretting having used a lawyer at all);
- satisfied claimants tended to emphasise their interpersonal relationship with their lawyer and the lawyer's good communication skills (consistent with evidence from interviews with motor accident claimants in the Netherlands (Elbers et al, 2012) and a UK study of medical negligence claimants (Melville, Stephen & Krause, 2014)); and
- costs were a major area of uncertainty for claimants, with some reporting reluctance to ask for further explanation about their claim for fear of running up costs, and expressing confusion about the basis on which costs were calculated (even after settlement) (consistent with UK empirical evidence indicating that consumers often do not understand costs agreements and are reluctant to question lawyers (Moorhead 2011)).

International evidence drawing on interviews with lawyers has indicated the significant role of both consumer understanding *and* lawyers' client selection practices in the market for personal injury legal services and therefore the experiences claimants have. Through interviews with lawyers (n=26), Semple (2018) identified a number of 'demand-side' (consumer) factors shaping the market for 'personal plight' legal services in Canada, namely:

- the high temporal and psychological 'search costs' for consumers associated with identifying competing and alternative lawyers;
- the scarcity of comparable information on price and quality; and
- the use of contingency fees, which are not well understood by consumers and may reduce consumer preparedness to negotiate or undertake price comparisons.

Conditional ('No Win, No Fee') costs agreements are the mainstay of personal injury legal practice in Australia (rather than contingency fees). There is no published empirical evidence of how Australian consumers understand these agreements and whether they limit willingness to shop around (though it seems likely this would be

the case, given how widespread the use of these agreements is in some areas of law, such as transport accident and workers' compensation claims). Evidence from the USA has consistently shown that the representation clients are able to obtain is also driven by decisions lawyers make about taking on clients (Trautner, 2011; Hyman et al, 2016; Rahmati et al, 2018; Abel, 2006; see also Relis (2002) summarising earlier research). Though there is no equivalent evidence base in Australia, in view of local injury lawyers' ethical and commercial obligations, it is highly likely that similar decision processes shape the legal services consumers access in such claims here as well. Accordingly, it is necessary to account for both lawyer and consumer decision-making when assessing the functioning of the legal services market in this practice setting.

### 2.2.2 Family law

Unlike in many areas of law relevant to the consumer population of interest, there is a long tradition of empirical research about the experiences of participants in family law proceedings, particularly by the Australian Institute of Family Studies. Family law legal services, however, are provided by practitioners operating in private and publicly-funded practice settings. Research relating to consumers' experiences of legal services for family law matters sometimes does not clearly distinguish between private legal services and those that are publicly funded (see, eg, Howieson, 2011 (in a study involving surveys with 230 lawyers and 94 clients about experiences in family law matters); Kaspiew et al, 2015 (in an evaluation of reforms to address family violence in the family law system)).

Where there is differentiation, there is more evidence relating to consumers' experiences of the range of publicly-funded legal services in the family law sector. This is likely a product of a range of factors including the relatively infrequent use of private legal services by people with family law problems (Coumarelos et al, 2012); the reporting and evaluation practices associated with government-funded programs; and the absence of such practices in connection with private services (see, eg, Moloney et al, 2013; see further the discussion in Part 4 below). In recent years, for example, there has been considerable focus on consumers' experiences of interacting with Independent Children's Lawyers, who are independent lawyers (typically publicly funded) appointed by courts to represent the interests of children in family law disputes (see eg Carson et al, 2018; Kaspiew et al, 2014). Research on these services does not meet the inclusion criteria for this review.

The most comprehensive research on satisfaction with private lawyers is contained in a 2000 report on *Legal Services in Family Law* (Hunter et al, 2000) which made comparisons between the services provided to legally-aided and self-funded clients in family law, and clients' perceptions of these services. The study data relevantly included interviews with 80 private sector lawyers together with client surveys (n=95 with a private lawyer) and review of client files. With the average bills paid for services at around \$10,000, roughly half of clients thought the costs were too high while the other half regarded the bill was 'about right' (p 264). Those who thought their bill was too high reported less satisfaction with their lawyer. More than two

thirds of clients (68 per cent) were satisfied with their lawyer, and there was no difference in satisfaction levels between self-funded and legal aid clients. Satisfaction with the lawyer was closely correlated with satisfaction with the case outcome. The largest share of clients reported having chosen their lawyer on the basis of a referral from a friend or relative (29 per cent), with other referrals coming from another lawyer (18 per cent) or Legal Aid (18 per cent). Using the telephone book was the way 12 per cent of clients found their lawyer.

This research is now more than 20 years old and pre-dates a range of important reforms in Australian family law (see ALRC, 2019) and changes in technology that would shape how lawyers might now be found. No more recent evidence could be located of consumers' strategies for selecting private family law legal services. There are instances of satisfaction measures with family lawyers being reported in more recent qualitative and quantitative research; in these studies, however, private practice lawyers are not the focus. Carson, Fehlberg and Millward (2013), for example, reported that in an interview study with consumers, satisfaction with legal services (which were predominantly private) was most likely to be reported when an agreement was reached (indicating a lack of separation of process and outcome) and where both separating parents were cooperative; additionally, reliable advice and supportive service were referred to by satisfied clients. Where dissatisfaction was reported, it was related to the high cost of legal services and perceived pressure to agree to parenting arrangements.

In a review of evidence on parental perspectives on family law in England and Wales, Hunt (2010) indicated that few studies have experiences of lawyer use as a primary focus, with most having references to data relating to solicitors ranging from fairly substantial to only occasional. The studies examined by Hunt identified that consumers had difficulty locating lawyers with relevant expertise, relying instead on solicitors they knew or referrals from family or friends. Data on satisfaction with lawyers was limited, and little information was available on the proportion of consumers who changed solicitors in the course of a matter. Hunt noted that the bulk of the evidence was qualitative and based on small samples, meaning that the scale of any problems and the balance between consumers who were satisfied and dissatisfied could not be established. Many of these observations hold true for the Australian setting as well.

### 2.2.3 Small business

In the domain of small businesses and their legal problems, the most thorough analysis was provided by Considine and Handley (1997) in their collation of findings from a range of surveys. These included a 1996 ABS survey of small businesses that collected data on use of lawyers and a 1979 survey of Queensland small businesses that found dissatisfaction with solicitors was more prevalent than for accountants and banks (findings mirrored in a 1995 survey in New South Wales). This material is now very dated.

More recently, using a combination of survey and interview methods, Coverdale, Jordan and du Plessis (2012) investigated the experiences of regional small

businesses in accessing legal services. Interviews were conducted with small business organisations and lawyers to uncover concerns in relation to access to legal services, which formed the basis of the survey. The survey (n=207 respondents) found that 55 per cent of small business participants had never sought legal assistance or sought legal assistance less than once a year. Most respondents had a preference to engage local firms where necessary; however, one in four respondents preferred to seek advice from a law firm 'in a larger regional centre or in Melbourne over a local firm' for matters relating to planning and environment, workplace accidents, health and safety and employment contracts and disputes (Coverdale, Jordan and du Plessis, 2012).

The paucity of research on how small businesses seek and experience legal services stands in stark contrast to the situation in the UK. The legal needs of small businesses have been a focus area for the UK Legal Services Board for a number of years. Pleasence and Balmer (2013) undertook a small business legal needs benchmarking survey, finding that only 13 per cent agreed using lawyers was a cost-effective means to resolve legal problems. A second-wave 2015 small business survey with 10,528 respondents found that only 20 per cent of businesses with a legal problem sought legal services, and attitudes to lawyers were mixed:

- 13 per cent of respondents regarded lawyers as cost-effective;
- 20 per cent disagreed with the statement 'When I need one, I find it easy to find a suitable legal services provider that I can afford'; and
- 50 per cent regarded legal service providers as a last resort for assistance (Blackburn, Kitching and Saridakis, 2015).

The third wave of the Legal Services Board's survey of the legal needs of small businesses drew on responses from 10,579 owners and managers (BMG, 2018). In addition to reporting on respondents' experiences of legal problems, and in response to the legal services market study undertaken by the Competition and Markets Authority (2016), the research focused on the selection of and satisfaction with legal advisers. It reported that in 2017, one in five (22 per cent) of respondents shopped around for their main choice of adviser, and 83 per cent were satisfied with their adviser's service. In 2021, the Legal Services Board is reviewing its small business legal need survey in advance of conducting a fourth wave.

## Part Three: The Australian Market for Legal Services

This Part explores evidence of the operation of the market for legal services and related consumer policy. It provides a brief introduction to research on the information asymmetry problems affecting the consumer population of interest for this review. It then explores the research evidence on the operation of the local legal services market.

### 3.1 Consumers and the market for legal services

The application of market and economic principles to legal services has a long history. From the 1980s and 1990s these were important influences on debates about professional regulation and were a driver behind the development of the Uniform Law (with an emphasis on the perceived anti-competitive impacts of complex regulation (Spiegelman, 2003; Robertson, 2015)).

The ‘market failure view of regulation’ emphasises the information asymmetry between consumers and providers of legal services, a problem that will typically be highly relevant to the consumer population of interest to this review (Stephen, Love & Rickman 2017). Legal services are traditionally recognised as a ‘credence good’, meaning consumers are often unable to evaluate their purchase or its quality even after consumption (Darby & Karni, 1973; Zethaml, 1981; Waye, Bogomolov & Pich, 2020). As Stephen (2008, p 1138) suggests:

Consumers of legal services (particularly individuals and households) do not have the technical knowledge of the law necessary to understand their legal needs and how they might best be protected. In common with most professional services providers, often the first task of a legal professional is that of diagnosis. Only after this has been done can a means by which to resolve the issue be provided (usually by the same professional). The consumer is very much in the hands of the professional in such circumstances. Indeed, even after the service has been provided the consumer will not be in a position to judge whether what has been provided is appropriate or the price paid reasonable.

This information asymmetry between consumers and service providers create a risk of market failure because consumers are unable to actively select services based on such preferences as price and quality in the expected way, and may instead be guided by unreliable proxies such as brand and word-of-mouth (Martin Hobbs, 2019). The range of factors that can impact on the outcome of a lawyer’s services – including the relevant facts and law, and the opposing party’s conduct – make this judgement even harder (Productivity Commission, 2014). The ‘one-shotter’ status of many of the consumers in this review’s population of interest – with little exposure to or experience of using legal services (compared with the ‘repeat player’ standing of the experienced and institutional opponents they may be opposed to) (Galanter, 1974) – creates further disadvantage for consumers in making service choices and assessing quality (Stephen, Love & Rickman, 2017).

Some commentators argue that the problem of information asymmetry is attenuated by such factors as the lawyers’ education qualifications, professional conduct and



fiduciary obligations, compulsory insurance and personal integrity (see, eg, Spigelman 2003). It remains the case, however, that in the Australian context there is very little empirical evidence of consumers' experiences of choosing and using lawyers (as described in Part 2 of this review; see Legal Services Consumer Panel, 2019 (on the Consumer Tracker Survey)). Additionally, there is little relatively little empirical evidence characterising the impact of regulation on legal services markets (Chaserant & Harnay, 2013; Stephen, Love & Rickman, 2017), leaving considerable gaps in our understanding in this area. Critically, the information asymmetry characteristics of the market for legal services also impact on how we can understand consumers' experiences of legal services. As Chaserant and Harnay (2013, p 279) explain, consumers who use a lawyer in connection with a unique event in their lives (as is likely the case for the population of interest here) face a concentrated difficulty:

Having no prior experience of the service, they cannot compare the quality of the service they are currently buying with the quality of a similar service they may have purchased previously. Thus, they may also be unable to convey information to other consumers.

### 3.2 Evidence of the operation of the Australian legal services market

The evidence discussed in Part 2 of this report reflects aspects of the operation of legal services markets in Australia in that it sheds a little light on the way consumers make decisions and evaluate the services they receive. In this part, however, the review draws together a broader range of evidence on the operation of markets for services relevant to the consumer population of interest.

Consistent with the economic analysis discussed above, the Productivity Commission's report on Access to Justice Arrangements (2014) documented features of the information asymmetry in the market for legal services. Given the inquiry's focus, a number of these features are of particular relevance to the 'missing middle' consumer population. These included:

- a lack of clear and certain price information;
- difficulty for consumers in choosing and changing private legal service providers; and
- the problem of effectively judging service quality.

The Commission's recommendations for improvement included establishing an online portal to provide a typical price guide for common legal services (Recommendation 6.2) and greater regulatory support for, and promotion of, unbundled legal services (Recommendation 19.1). The recommended online price guide resources have not been developed. This lack of development can be contrasted with the interactive Prices Dashboard provided by the UK Legal Services Board for common legal services (Legal Services Board, 2020).

Evidence of the extent and impacts of unbundled services remains elusive (McDonald, 2020; Bell, 2017). This is particularly the case for private legal services.



There has been no published empirical analysis of the Australian prevalence of unbundled services relevant to the target population for this review, and the evidence is best described as piecemeal. In a recent interview study of self-represented litigants' experiences in family law proceedings involving family violence allegations (n=35), Wangmann, Booth & Kaye (2020) reported that half of the interviewees had used unbundled services at some stage in their proceedings, to advise on prospects, provide explanations, prepare documents and forms to prepare for and appear in court. In the UK, a 2015 report prepared for the Legal Services Board and Legal Services Consumer Panel used interviews to investigate consumer (n=35), practitioner (n=14) and judicial (n=6) perspectives on unbundled services. The research focused on consumers who had experience of unbundled services in a civil, family or immigration matter, with findings from the consumer interviews including that:

- consumers perceived unbundling as enabling them to access legal advice when they might not otherwise have been able to afford it;
- consumers reported benefits associated with retaining direct control in their cases, resulting in matters being concluded more quickly;
- agreements made for services to be unbundled were not a reflection of 'advertised or promoted offers for unbundled services' (p 6); and
- consumers felt confident and capable to take on tasks but also believed the involvement of a lawyer improved the outcomes they achieved (Ipsos MORI, 2015).

Notably, the LSB's objectives in undertaking this research included increasing stakeholder awareness about unbundling; understanding consumer experiences of unbundling; informing a regulatory framework; and facilitating consumer decision-making (Ipsos MORI, 2015).

On three occasions the Australian Bureau of Statistics produced reports on the legal services industry (ABS 1999, 2002, 2008). That information is now very dated. More recent analyses of the market for private legal services developed by commercial organisations in (see, for example, IBISWorld 2021a, 2021b; Thomson Reuters, 2020). Internationally, these reports are also produced by technology vendors (see, for example, Clio, 2020, 2021). These reports tend to focus on commercial and corporate legal services, putting them beyond scope for this review. Two exceptions are the IBISWorld reports on personal injury legal services (2021c) and personal legal services (comprising family, wills and estates, property and personal injury law) (2021d), which document such characteristics as the revenue, profit and size of this market sector, together with the trends affecting performance over time and into the future. The methodologies and data sources used in these reports are not transparent, making it hard to evaluate their quality.

In recent years there has been massive growth in commentary and analysis about the impact of new technologies on legal services and associated markets in Australia (see, for example, Law Council of Australia, 2018; Waye, Verreyne & Knowler, 2018; Legg & Bell, 2020). Legal practice and consumer expectations are being

shaped in a range of ways by technological developments. Nonetheless, the diffusion of technology practices is uneven and the impacts for many consumers (particularly in the sectors of interest to this review) are not clear (Webley et al, 2019; Webb, 2020). There is a paucity of empirical studies exploring the uptake of new technologies by practitioners servicing the consumer population of interest and consumer perspectives of online services in Australia. Exceptions include an analysis of consumer reviews of online legal services providers in Australia and the USA (Waye, Bogomolov & Pich, 2020; see also Cornett, 2019): it found consistencies with quality indicators employed by the UK Legal Services Consumer Panel (2020) as well as common complaints made about traditional legal services providers (delays and failures to advise and comply with instructions). A small-scale and exploratory qualitative study of the way nine Gold Coast practitioners in small and medium firms use technology in their practice found engagement rather than disruption was occurring (Jones & Pearson, 2020). This research, which recruited participants via personal contact and a local email list of practitioners, reported that firms were using practice management software, digital document storage, automated document production tools and legal process outsourcing. Participants did not regard technology as a risk to their jobs, but had concerns about how junior lawyers would develop skills where some of the work practitioners at that level had done in the past had been automated (Jones & Pearson, 2020). Further research is required to more fully understand the impacts of new technologies on legal practice and legal services markets, and for consumers.

## Part Four: Discussion and Recommendations

This Part brings together the findings of the review, identifying areas of coverage as well as gaps in the evidence base on consumers' experiences of legal services. It draws on this analysis to make recommendations for future research.

### 4.1 What does the existing evidence tell us?

#### 4.1.1 There is limited evidence and the gaps are large

- There is little research exploring the experience of the target population in selecting, using and assessing satisfaction with private legal services.
- The insight provided by existing quantitative research (legal need and community perceptions research, the consumer law survey and studies of complaints and disciplinary proceedings) does not address consumers' experiences of services in depth.
- The research in the personal injury and family law domains is predominantly qualitative and based on self-selected samples. This kind of research provides useful in-depth insight, but is not representative of all consumer experiences. In fact, there are good reasons to believe that people who agree to participate in an interview may be unusual in some way (for example, they might have an unusual story to tell).
- There is a particular evidence gap around consumers' experiences of paid legal services that are *not* associated with immediate legal problems (in the sense dealt with in legal need research), or 'personal plight' legal services. Where research focuses on a legal problem or crisis as the entry point for services, it does not address consumers in the population of interest who may not perceive a problem (for example in relation to a property purchase or sale, or advice on establishing or disestablishing a legal entity).

#### 4.1.2 Consumers do not shop around and are confused by costs – and these factors impact on satisfaction

- Though it may be insufficiently recent to pick up on the use of modern online search mechanisms, the existing evidence suggests personal referrals and networks continue to play an important role in lawyer selection.
- There is confusion about legal costs and this can be exacerbated by a lack of understanding of the work the lawyer does. Lack of understanding and confusion on costs can have a negative impact on how satisfied clients are with the services they have received.

- Client satisfaction with lawyers may not only be about the quality of services. Satisfaction with outcome and the interpersonal relationship between lawyer and consumer may also play a role.

#### 4.1.3 The evidence we have raises significant questions

- Despite regulatory mechanisms that purport to ensure consumers understand costs agreements they enter into, the evidence suggests confusion persists. How effective are the current costs disclosure mechanisms when a proportion of claimants are consistently confused by them?
- In areas where there is an established evidence base, the evidence demonstrates that clients and markets are heterogeneous. In the personal injury sector, for example, consumers have reported differing preferences about how active a role they wish to retain in their claim. These kinds of variations within a subset of consumers raise questions about whether there is in fact a single market for legal services, or multiple markets for different consumers in connection with a single problem type or practice area.
- Evidence indicating that in the personal injury sector lawyers choose consumers just as consumers choose lawyers should be investigated. In particular, are there other client selection practices occurring in other areas of law, and what are their access to justice and market-shaping implications?

#### 4.1.4 The lack of prevalence data and user access are barriers

- Properly understanding the operation of a market for legal services requires understanding how many individuals and entities are using services in the market. There is not a good quality body of evidence about the prevalence of private legal service use in the consumer population of interest.
- This is largely a product of the status of private law firms and practitioners as the custodians of the data about service use in this market sector.
- It is likely that the increasing emphasis on data science and use of administrative data is carrying through to the larger firms operating in areas of law relevant to this review – but there is no transparency on this.
- The involvement of private lawyers makes it hard to get to consumers for research (see, for example, Moore, Mello & Bismark, 2019 (on resistance to research on patients' experiences and fear of lawsuits)). Without knowing more about who is using services it is hard to develop a representative profile of how these services are found and experienced.
- The relatively infrequent use of private legal services by consumers in the target population is a challenge for any research that seeks to establish a representative, quantitative picture of consumers' experiences in terms of

information needs, levels of comprehension of the services provided (before and after engaging a lawyer) and satisfaction with services. To get a representative sample of users of legal services would require establishing a survey with a random probability sample (see Mirrlees-Black 2019; VLF, 2021 on the attributes and differences of different survey research designs). Such an approach is expensive and runs the risk of generating an insufficient sample size, particularly given the rarity of the exposure of interest (that is, use of private legal services).

#### 4.1.5 There has been little attention to vulnerability risk factors

- The review found very little evidence of empirical research differentiating between groups of consumers in the population of interest on the basis of legal capability or what have been described as vulnerability risk factors (eg cognitive impairment, mental health problems, disability). There would be value in exploring suitable research designs to assess the experience of relevant consumer groups, as the UK Legal Services Board has done with respect to the following consumer groups:
  - asylum seekers;
  - people with learning difficulties;
  - people who do not hear;
  - people with dementia; and
  - people with mental health problems.
- The CMA (2020, p B4) recommends that:

Where possible, regulators should use existing data and research to produce brief summaries of known vulnerabilities in key legal services when developing best practice guidance and quality information remedies... As well as drawing on data and research held by the regulators themselves, those designing best practice guides or quality information remedies should consider seeking input from researchers working on legal user vulnerability... We recommend that qualitative interviewing and user testing be used by regulators to understand the context of and barriers to a consumer's search for a given legal service (eg immigration, divorce) to inform user centred design of best practice guides and formats. In addition, all best practice guides should consider providing guidance on accessibility for consumers with vision, hearing, mobility, and thinking and understanding barriers.
- One option could be for the LSB+C to build on its existing research on complaints to explore whether consumers with vulnerability risk factors are more likely than others to be involved in complaints, or complaints of different

types. Additionally, it would be worthwhile to explore whether such consumers are more likely than others to experience lawyer misconduct.

## 4.2 Why is there a lack of good quality evidence?

### 4.2.1 Private firms have little incentive to improve the evidence

- Private firms are effectively the custodians of data about the number and identities of consumers (clients) being advised in the population of interest. There are powerful commercial and reputational reasons for such firms not divulging this information or to facilitate research.
- There is an unknowable body of privately-held commercial evidence about the profile of consumers in the population of interest accessing services.
- It is highly likely that larger private firms servicing the population of interest engage in their own market monitoring activities, and perhaps also gather customer service feedback, but for commercial and reputational reasons they are also unlikely to divulge this information.
- It is also worth noting that there is a lack of disciplinary capability for empirical and evaluation research amongst lawyers, which adds to scepticism and suspicion about the value of this kind of research.

## 4.3 Recommendations for future research

### 4.3.1 A guide from the Competition and Markets Authority (UK)

In the research reviewed for this report, the main types of research designs and data used were:

- opt-in, non-probability surveys;
- probability surveys;
- quantitative analysis of administrative data sources;
- content analysis (qualitative and quantitative) of consumer reviews, complaints files, disciplinary decisions and lawyers' files; and
- qualitative research involving interviews and focus groups with users of legal services.

In 2016 the UK Competition and Markets Authority (CMA) published its Legal Services Market Study. The Market Study made a range of findings and recommendations about challenges consumers experience in navigating legal services and making informed choices in the absence of transparent information about price, service and quality. The Market Study has been a substantial influence

on the impressive program of consumer-orientated research undertaken by the Legal Services Board and the Legal Services Consumer Panel in the UK, including on price and quality. In December 2020, the CMA published an assessment of the implementation of the Market Study. In that assessment, it provided a guide to the research methods that are most typically suited to researching and testing consumer experiences and designing and implementing interventions:

Regulators could use the following methods of research and testing, individually or in combination when designing and implementing interventions:

- (a) **Qualitative research:** this method commonly includes consumer focus groups, workshops and interviews (with both consumers and legal services providers). It can be used to explore consumer or firm behaviours, attitudes, expectations and beliefs both at present and in the presence of new remedies, as well as to inform remedy design before other forms of testing;
- (b) **Surveys:** these can be used to provide robust evidence for specific questions, in order to obtain quantitative and/or qualitative information on consumer and provider attitudes, beliefs and expectations.
- (c) **Laboratory testing:** laboratory testing and online experiments can provide insights on consumers' ability to 'assess' new information. In a laboratory experiment, participants are assigned to groups and given a specific scenario (eg how the publishing of price and quality information in different formats affects consumers' ability and willingness to compare and choose between legal services providers).
- (d) **Field trials:** this involves real-life testing of interventions (also called randomised controlled trials or RCTs). In a typical trial, the population to be tested is divided into two groups – one group would receive the service as usual and the other would receive the new intervention (eg the visibility of complaints data prior to purchase). The difference in customer behaviour and outcome can then be measured.
- (e) **User/human-centred or User Experience (UX) design:** these are not entirely separate methods but rather terminology used to describe design processes that involve users throughout. User centres / UX design comprises a mix of iterative design underpinned by inputs from research to understand user needs as well as user testing of designs with end users (CMA, 2020).

#### 4.3.2 In view of the challenges, creative strategies are required

- If an organisation was intending to embark on a program of research to develop the evidence base on consumer experiences, it could be prudent to start with some small-scale qualitative and experimental pieces of work before

commissioning a large-scale quantitative survey. Getting runs on the board would help with developing stakeholder buy-in. Commencing with a focus on consumers facing vulnerability risk factors would be a highly appropriate starting point.

- The suitability of specific research designs will depend on the questions of interest. Having said that, there are some guides provided by both the areas of concentration and the gaps identified in the review.
- In view of the inaccessibility of some data, creative strategies are required to identify potential research partners and data sources. This could involve partnering with institutional litigants, industry stakeholders, and dispute resolution organisations to facilitate access to administrative data or recruitment of research participants.
- There are some examples of this being done successfully in the existing literature. Analysis of administrative data held by compensation schemes enabled a profile of lawyer use in injury claims to be developed (Scollay et al, 2020). Longitudinal research designs – where a cohort of consumers is established and followed up over time – are another mechanism to get to consumers (see, eg, Casey, Feyer & Cameron, 2015; Kaspiew & Qu, 2016).
- There is also strong potential associated with the use of user/human-centred, interaction or User Experience (UX) design to experimentally test consumers' understanding of costs agreements to explore how much comprehension and informed consent is possible, and whether improvements can be made.
- Mystery shopping approaches may also have some application to some legal services used by the population of interest, for example to establish common pricing for standard services (such as conveyancing) (see eg Wilson, 1998)).

#### 4.3.3 Specific topics about which further research is required

The discussion above suggests a number of possibilities for consideration, both to frame potential research and as research questions to explore:

- What incentives and levers are available to encourage private firms and practitioners to participate in consumer experience research?
- How do vulnerabilities affect the selection and use of legal services by the population of interest? What data does VLSB+C hold that might be used to address this question?
- How can private legal services learn from the growing research on legal capability? How can the relevance of legal capability for paid legal services be explored?



- What are the impacts of new technologies on legal practice and legal services markets relevant to the consumer population of interest? How are these changes impacting on consumers?
- What innovative design and experimental research approaches could be applied in the Victorian legal services setting?
- How might the evidence gap around consumers' experiences of paid legal services that are *not* associated with immediate legal problems, or 'personal plight' legal services, best be addressed?

## Part Five: Conclusion

This rapid review of evidence on the experience of legal services in the consumer population of interest has identified a range of weaknesses in our existing understanding. By employing a structured process for collating and synthesising a diverse and often hidden body of literature, the review explored:

- quantitative evidence of consumer experience across problem types (including legal need and community perceptions research, the Consumer Law Survey, and complaints and disciplinary action against lawyers);
- evidence of consumer experiences across personal injury, family law and small business legal problems; and
- evidence of the operation of an Australian market for legal services.

The review identified a range of promising areas for further research to begin the process of developing the evidence base. The recommendations set out a range of ways the evidence base could be developed, including with respect to strategy for building stakeholder commitment to this initiative. The VLSB+C is well-positioned to draw on the work being undertaken in other jurisdictions to inform its research activities, which will, in turn make an important contribution to supporting the VLSB+C's organisational, stewardship and regulatory approach.

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